

### **Remarks**

In response to the Office Action mailed April 29, 2005, reconsideration and allowance are respectfully requested.

Applicant acknowledges receipt of the Interview Summary Form pertaining to the February 7, 2005 telephonic interview. Applicant summarized the substance of the interview in the Amendment dated February 23, 2005.

Claims 48, 49, and 74 stand rejected under 35 U.S.C. § 112 ¶ 2 because they depend from canceled claim 47. Claims 48 and 49 are rewritten in independent form to include the limitations of claim 45; claim 74 is amended to depend from claim 45. Claims 48, 49, and 74 are therefore believed to comply with § 112.

The Examiner indicated that claim 49 would be allowable if rewritten to overcome the § 112 ¶ 2 objection and include all the limitations of the base claim. (4/29/05 Office Action at 3.) Applicant has done so, and therefore claim 49 is allowable. Applicant respectfully submits that the same logic also applies to claim 48, since that claim also was rejected solely under § 112 ¶ 2. Applicant has thus rewritten claim 48 to overcome the § 112 ¶ 2 objection and include all the limitations of the base claim, and therefore claim 48 is allowable.

Applicant acknowledges the Examiner's objection to dependent claims 50, 56-62, and 69, but declines at this time to rewrite those claims in independent form, given that the independent claims — thus these dependent claims — are believed to be allowable.

The rejection of claims 45, 46, 51-55, 63, 64-68, 70-75, 76, 77, and 78 under § 103(a) as being obvious in view of Schulze (U.S. Patent No. 1,386,078) is traversed.

The present invention concerns an accessory for a liquid container, in particular a beverage container. As recited in independent claims 45 and 66, the accessory includes first and second clamping members and extending portions that extend away from each other and

from a vertical axis of the second clamping member with a directional component that is transverse to a vertical axis of the second clamping member. In addition, according to the independent claims, first and second clamping surfaces (on the first clamping member) are “pressed against an inner surface of the container” and with a third clamping surface (on the second clamping member) is “engaging an outer surface of the container.”

As an initial matter, Applicant notes the Examiner’s assertion that Applicant’s previous arguments “are mostly address [sic] to the container, and to the elastic deformation of the extending portions,” with the Examiner objecting that “[t]he container (as recited in claim 45) is not a positive element of the combination.” (4/29/05 Office Action at 4.) But the structure recited in claim 45 is intended at least primarily to receive a container — as the entirety of the specification and drawings shows — and thus the manner in which that structure interacts with a container is clearly pertinent.

Regarding the structure recited in the present claims, significantly, the invention provides two possible directions of elastic deformation.

The first such direction is provided by the first and second clamping *members* (for the inner and outer container surfaces, respectively), which can be elastically moved away from one another. In this manner, when a container (such as a glass) is inserted between the first and second clamping members, these clamping members can be elastically or resiliently moved away from one another and thereafter — due to their tendency to return to their original relative positions — will exert a clamping force on the inner and outer container surfaces.

The second such direction is provided by the first and second clamping *surfaces* — defined by elastically deformable extending portions that the first clamping member comprises — which can be elastically or resiliently moved relative to one another. In this

manner, by contact with the inner container surface, the first and second clamping surfaces can be elastically urged inward. This increases the force at two locations or areas that are spaced from one another in the circumferential or tangential direction.

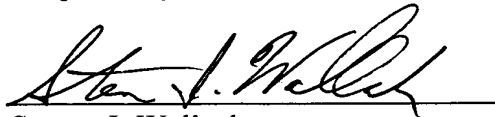
Independent claims 45 and 66 explicitly recite the first and second clamping members, and the first and second clamping surfaces of the first clamping member, that provide those two possible directions of elastic deformation. New claim 79 is also presented to reflect certain specific structures taught in the present invention, again including the first and second clamping members and the first and second clamping surfaces defined by the first clamping member.

The Examiner argues that Schulze teaches the same “first and second clamping members” and “first and second clamping surfaces” as claimed by the Applicant. (4/29/05 Office Action at 2.) But the structures disclosed in Schulze are not the same as those recited in the present claims. The Examiner implicitly recognizes this because he has withdrawn the § 102 anticipation rejections of claims 45 and 66. Moreover, the Examiner does not identify any limitations in 45 and 66 that are not anticipated by Schulze but are supposedly obvious in view of Schulze. Furthermore, the structures in Schulze do not provide the two possible directions of elastic deformation described above, and therefore the structures recited in claims 45 and 66, and in new claim 79, are patentably different from those in Schulze.

For at least the foregoing reasons, Schulze cannot render obvious independent claims 45, 66, or 79. Dependent claims 46, 51-55, 63, 64, 65, 67, 68, 70-75, 76, 77, and 78 are also nonobvious.

In view of the foregoing, this application is believed to be in condition for allowance,  
and a Notice to that effect is respectfully solicited.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Steven I. Wallach", is written over a horizontal line.

Steven I. Wallach

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